

REMARKS

Claims 1-16, 18-25, 31, and 32 are currently pending and stand rejected. Claim 12 is withdrawn. Applicants thank Examiner Hoekstra for extending the courtesy of a telephone interview to Applicants' undersigned attorney and Lisa Adams on January 12, 2009. Claims 1, 31, and 32 were discussed and agreement was reached that claim amendments of the type made herein overcome the cited art.

Amendments to the Drawings

Applicants submit herewith a corrected drawing sheet for Figure 1B (sheet 2). The positioning of elements 16, 18, and 32 have been corrected to correspond to the originally-filed drawings, and their numeric labels correctly applied as described in the specification at paragraph [0039], [0041], and [0042]. No new matter is added.

Claim Amendments

Independent claim 1 is amended to recite a tissue extraction and maceration device including a sizing screen having openings with a size that prevent passage of excised tissue samples having a size greater than a size of the openings and a cutting member disposed within the outer tube and coupled to the shaft at a position proximal to the tissue harvesting tip and adjacent to the sizing screen such that excised tissue samples prevented from passing through the sizing screen by the openings are macerated by the cutting member to form tissue samples having a size that can pass through the openings. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraphs [0040]-[0042] of the application. Dependent claim 4 is amended to include the word "substantially." Claim 18 is cancelled. Claims 19 and 20 are amended to correspond to amended claim 1.

Independent claim 31 is amended to recite a tissue harvesting device including a shaft having a tissue harvesting tip formed on a distal end thereof, the tissue harvesting tip being effective to excise a tissue sample and the shaft being movable between a first, proximal position in which the tissue harvesting tip is fully disposed within an outer tube, and a second, distal

position in which the tissue harvesting tip extends through a substantially open distal end of the outer tube. In addition, the tissue harvesting device includes a cutting member fully disposed within the outer tube when the shaft is in both the proximal and distal positions, the cutting member being effective to macerate a tissue sample excised by the tissue harvesting tip and received within the outer tube. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraph [0043] of the application.

Independent claim 32 is amended to recite a tissue harvesting device having a plurality of cutting teeth each having a cutting edge that forms at least a portion of an edge of each opening that is formed in a substantially hollow cylindrical member. Support for this amendment can be found throughout the specification and in the drawings, for example in paragraph [0039] of the application.

Applicants add new dependent claims 33-39, which depend from claims 1 and 31. Support for these claims can be found throughout the specification and in the drawings, for example at paragraphs [0040]-[0042]. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 102

Claims 1-4, 11, 13-16, 18, 21-25, and 31-32 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Application No. 2002/0007190 of Wulfman et al. ("Wulfman"). As indicated above, the Examiner has agreed that claim amendments of the type made herein to claims 1, 31, and 32 distinguish over Wulfman.

In particular, with regard to claim 1, there is nothing in the disclosure or illustrations of Wulfman that would suggest using a second cutting member, fully disposed within an outer tube and positioned adjacent to a sizing screen, to macerate tissue prevented from passing through openings in the sizing screen to form tissue samples having a size that can pass through the openings. Neither of the cutting members in FIG. 8A of Wulfman, referred to by the Examiner as anticipating claim 1, nor any of Wulfman's other cutting member embodiments, meet these requirements. In addition, referring to the stationary bearing 169 in FIG. 12 of Wulfman, which the Examiner refers to as a sizing screen, it can be seen that there is no cutting member

positioned adjacent to the bearing 169 and there is no teaching that would suggest placing a cutting member adjacent to the bearing 169 and disposed in an outer tube to macerate excised tissue samples to have a size that can pass through the openings. Accordingly, claim 1, as well as claims 2-4, 11, 13-16, 18, and 21-25 which depend therefrom, distinguish over Wulfman and represent allowable subject matter.

With regard to claim 31, Wulfman does not teach or suggest any cutting element coupled to a shaft that is fully disposed within an outer tube at all times while the shaft is in both proximal and distal positions, much less one positioned proximal to a tissue harvesting tip and effective to macerate tissue excised by the tissue harvesting tip and received within the outer tube, as required by claim 31. Accordingly, Wulfman fails to meet the requirements of claim 31 and claim 31 distinguishes over Wulfman and represents allowable subject matter.

Finally, with regard to claim 32, the Examiner refers to FIG. 24 as teaching the requirements of claim 32. FIG. 24 of Wulfman is an attachment element having openings 482 formed therein and cutting members 254' formed on the outside thereof. The cutting members 254' extend perpendicularly from the body of the attachment element and terminate in a beveled cutting edge 230' that is a distance away from the body of the attachment element and the opening. As is clearly shown in FIG. 24, the cutting edge 230' of the cutting member 254' does not form an edge of the opening 482. A base portion of the cutting member 254' instead forms an edge of the opening 482. This configuration is not sufficient to meet the requirements of the claim. Accordingly, claim 32 distinguishes over Wulfman and represents allowable subject matter.

Rejections Pursuant to 35 U.S.C. § 103

Claims 5-9 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Wulfman in view of U.S. Patent No. 5,489,291 of Wiley. In addition, claims 19-20 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Wulfman. As noted in Applicants' previous responses, Wiley does remedy the deficiencies of Wulfman with regard to claim 1, from which claims 5-9

depend. Thus, claims 5-9 and 19-20 distinguish over Wulfman in view of Wiley and over Wulfman alone at least because they depend from an allowable base claim.

New Claims

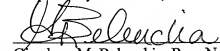
New claims 33-39 ultimately depend from claim 1 and thus distinguish over Wulfman and/or Wulfman in view of Wiley at least because they depend from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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